

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**CALVIN RAY ALLEN, JR.
And LOUISE BAILEY, Individually and as
Next Friend of Calvin Ray Allen, Jr.**

PLAINTIFFS

V. NO. 5:03CV00482 JMM

**ALTHEIMER UNIFIED SCHOOL DISTRICT;
WILLIAM THOMAS, as Chief Administrative Officer of
Altheimer Unified School District, Individually and in
his Official Capacity;
LYNN WOOD, as Local Education Agent, Individually
and in her Official Capacity;
CLAUSEY MYTON, former Principal of the School, Individually
and in his Official Capacity;
ARKANSAS DEPARTMENT OF EDUCATION;
THE CITY OF ALTHEIMER POLICE DEPARTMENT;
JEFFERSON COUNTY, ARKANSAS**

DEFENDANTS

ORDER

Pending is the motion for reconsideration of partial denial of summary judgment filed by Separate Defendant Arkansas Department of Education. (Docket # 84). Plaintiffs have responded.

In the Order dated July 6, 2007, the Court found as follows:

ADE contends that it fulfilled its requirements with regard to the education of the student. As set forth in the factual section herein, ADE claims that it consistently notified the school district of its obligations and even withheld IDEA funds from the school district until the district complied with the hearing officer's decision. ADE contends that the school district made every effort to comply with the hearing officer's order, however, the parent and student refused to accept services from the school district.

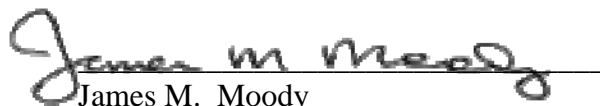
Plaintiffs dispute that they refused to accept services offered. Plaintiffs argue that the failure to implement the hearing officer's decision was due to the ADE's failure to enforce compliance by the school district. Plaintiffs contend that no residential placement was

offered that would meet the requirements of the hearing officer's decision. The Court finds that genuine issues of material fact exist which preclude the entry of summary judgment on Plaintiffs' claims against the ADE for failing to enforce the decision of the hearing officer as required by the IDEA.

The Court found and continues to find that genuine issues of fact exist as to whether the ADE fulfilled its requirements with regard to the education of the student. As set forth in the Court's order, the hearing officer issued a decision on February 27, 2003 requiring the school district to take certain action; in January 2004, ADE had not received copies of all evaluation reports or other information requested to demonstrate compliance with the hearing officer's order; and, in a meeting on January 13, 2004 the ADE found the information provided by the school district insufficient. Thereafter, the school district made certain efforts to comply with the hearing officers decision, but Plaintiffs' assert that the placement offered was in violation of the hearing officer's ruling. Nevertheless, the ADE approved the school district's Consolidated Application for FY-2003-04 and released the funds on May 7, 2004 and on June 15, 2004 ADE closed the administrative case file and requested that the school district notify ADE immediately if the student decided to accept the services offered him.

For these reasons, the motion for reconsideration is DENIED.

IT IS SO ORDERED this 27th day of July, 2007.


James M. Moody
United States District Judge